



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,636	10/15/2001	William P. Apps	RPC 0554 PUS	4010

7590 08/16/2002

KONSTANTINE J. DIAMOND
4010 East 26th Street
Los Angeles, CA 90023

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 08/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/977,636

Applicant(s)

APPS ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3727

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

omit → Claim 1 recites the limitation "the upper band" in lines 8 and 9. There is insufficient antecedent basis for this limitation in the claim.

omit { Claim 2 recites the limitation "the upper band member" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 contains a double inclusion in lines 1 and 2 where it recites "an inner surface" for the band member which seems to be the same as the interior surface of the band portion.

omit → Claim 8 recites the limitation "the band member" in line 8. There is insufficient antecedent basis for this limitation in the claim.

omit → Claim 12 recites the limitation "the cylindrically concave surface" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 recites the limitation "the corner bottle support area" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "the nesting projections" in line 11 and "the nesting projection" in line 13. There is insufficient antecedent basis for this limitation in the claim.

omit → Claim 24 recites the limitation "the band member" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3727

Claim 25 recites the limitation "the floor member" in lines 5 and 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 25 recites the limitation "the upper surfaces of the sidewalls of the second bottle crate" in lines 10 and 11 of page 17. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('461) and Apps et al. ('572).

Both Apps references have a substantially similar disclosure. These references show a nestable crate for bottles comprising a floor portion, a low-depth wall structure with a peripheral extending upper band (that portion which extends above the line delineating the upper edge of the lower wall portion 56 as shown in Fig. 1) having an interior surface with concave bottle contact portions (between the pylons 58), the wall structure also having a single-walled lower wall construction (the inner wall only) which includes adjacent column members (directly below each of the pylons 58) each having concave facing surfaces, the pylons of the upper band form nesting members which are received within the column members of an upwardly nested crate, a window is defined by the upper band at the top and by an adjacent pair of columns at the sides.

Claims 8, 11-18 and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps ('748).

Art Unit: 3727

Apps discloses a low-depth nestable crate for holding bottles comprising a floor member, a band and a plurality of columns (lower portion of elements 140 and 142), the band extending around the periphery of the crate and having spaced interior projections (the top portion of elements 140 and 142), a nesting window is formed between the columns, the columns have a pair of opposed surfaces on an interior surface and the exterior surface of the column has a recess which matingly receives a corresponding projection from a similar crate nested therebelow, the band includes concave inner surfaces (132), the crate has corner columns (146). An upwardly recessed bottle top receiving area on the floor bottom surface is shown in another embodiment of a fourth tray for bottles as shown by Fig. 36-38 which is of similar construction and has a higher extending wall which is considered to be a low-depth crate since the crate height is less than the bottle height.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hammett ('477).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9, 10, 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps ('748) (Apps 1) in view of Apps et al. ('572) (Apps 2).

Apps 1 discloses the invention except for concave shape of the facing surfaces of the adjacent column members. Apps 2 teaches concave facing surfaces on adjacent column


Art Unit: 3727

members. It would have been obvious to modify the surface of the facing surfaces to be concave in order to correspond to the curved shape of the bottle held within the crate so that the facing surface fits the bottle curved surface and supports the bottle curved surface more efficiently.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
August 14, 2002